

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Revisions to Broadcast Auxiliary Service Rules in	)	
Part 74 and Conforming Technical Rules for	)	
Broadcast Auxiliary Service, Cable Television	)	ET Docket No. 01-75
Relay Service and Fixed Services in Parts 74, 78	)	
and 101 of the Commission's Rules	)	
	)	
Telecommunications Industry Association,	)	
Petition for Rule Making Regarding Digital	)	RM-9418
Modulation for the Television Broadcast Auxiliary	)	
Service	)	
	)	
Alliance of Motion Picture and Television	)	
Producers, Petition for Rule Making Regarding	)	RM-9856
Low-Power Video Assist Devices in Portions of	)	
the UHF and VHF Television Bands	)	

**ORDER**

**Adopted: October 16, 2003**

**Released: October 16, 2003**

By the Chief, Office of Engineering and Technology:

1. By this Order, we deny a Request for Extension of Temporary Stay (Request) filed by the Society of Broadcast Engineers, Inc., (SBE)<sup>1</sup> to delay, by an additional six months, the effective date of coordination procedures adopted by the *Report and Order* in the above-captioned proceeding for most fixed point-to-point Aural and TV Broadcast Auxiliary Service (BAS) stations.<sup>2</sup> As a result of this action, the coordination rules become effective on October 16, 2003.

2. In the *Report and Order*, the Commission adopted coordination procedures for fixed Aural BAS stations above 944 MHz and fixed Television BAS (TV BAS) stations above 2110 MHz under Part 74 of the rules.<sup>3</sup> The Commission adopted these procedures to conform the coordination procedures for fixed BAS, and Cable Television Relay Service (CARS) under Part 78, with those already

<sup>1</sup> Society of Broadcast Engineers, Inc., Request for Extension of Temporary Stay, Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, ET Docket No. 01-75, filed Oct. 1, 2003 (Request).

<sup>2</sup> *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, ET Docket No. 01-75, *Report and Order*, FCC 02-298, 17 FCC Rcd 22979 (rel. Nov. 13, 2002), 68 FR 12743 (Mar. 17, 2003) (*Report and Order*).

<sup>3</sup> See *Report and Order* ¶¶ 53-65 and at Appendix A: Final Rules, §§ 74.502(d) and 74.638. In the *Report and Order*, the Commission also adopted the new coordination requirement for fixed stations in the Cable Television Relay Service (CARS) under Part 78. See *Report and Order* at Appendix A: Final Rules, § 78.36.

in effect for Fixed Microwave Services (FS) under Section 101.103(d) of the rules. It found that the FS procedures were appropriate for fixed BAS and CARS, stating that uniform procedures for bands shared among these services are necessary to promote spectrum efficiency and to minimize the possibility of harmful interference.<sup>4</sup> We note that because these procedures were already in effect for Aural and TV BAS stations in the bands 6425-6525 MHz and 17700-19700 MHz, the new rules only affect fixed BAS in the bands 944-952 MHz (950 MHz), 2450-2583.5 MHz (2.5 GHz), 6875-7125 MHz (7 GHz), and 12700-13250 MHz (13 GHz).

3. In its initial Request for Temporary Stay (Initial Request), SBE requested a one-year stay to allow BAS licensees time to correct inaccurate receive site information on the FCC's licensing database, the Universal Licensing System (ULS), noting that these errors are a legacy of licensing schemes previous to the ULS and occur in 29% of all fixed point-to-point BAS license records.<sup>5</sup> SBE further noted that receive site information was not required prior to 1974 and that it remains missing on many old licenses.<sup>6</sup> SBE explained that, compared to the informal coordination procedures currently in effect, the new, more formal coordination procedures require a more accurate database. SBE acknowledged previous Commission public notices asking broadcasters to examine and correct inaccuracies in the ULS, via informal correction procedures, but stated that with the adoption of formal coordination procedures, BAS licensees would have a greater incentive to ensure that their license records are up to date.<sup>7</sup>

4. In an *Order (Stay Order)* released on April 15, 2003, the Commission granted the requested relief for six months, agreeing with SBE that legacy database inaccuracies in the ULS could seriously affect the efficacy of the coordination procedures, and that these inaccuracies were not anticipated when the *Report and Order* setting these procedures was adopted.<sup>8</sup> The Commission found that a six month period was the proper balance to provide BAS licensees and Commission staff sufficient time to address completion and correction of legacy database inaccuracies without unnecessarily delaying the efficiency and protection benefits offered by the new coordination procedures.<sup>9</sup> It also found that SBE had demonstrated that, absent a stay, BAS licensees would suffer irreparable harm because of an increased likelihood of interference to their receive facilities. The *Stay Order* therefore delayed the effective date of the new coordination rules for six months, until October 16, 2003.<sup>10</sup>

5. During the six-month stay, SBE requested a blanket waiver of application fees for BAS applications filed to provide information missing from the ULS, in order to encourage the filing of such applications.<sup>11</sup> On September 3, 2003, the FCC's Office of Managing Director (OMD) dismissed SBE's

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<sup>4</sup> *Id.* ¶¶ 2, 53, 61.

<sup>5</sup> See Society of Broadcast Engineers, Inc., Request for Temporary Stay of the PCN Requirement, Revision of the Broadcast Auxiliary Service, ET Docket No. 01-75, Digital Modulation for all TV BAS Bands, RM-9418, and Low-Power Video Assist Devices, RM-9856, filed Apr. 4, 2003, at 2 (Initial Request).

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 5. See also "Wireless Telecommunications Bureau Makes Broadcast Auxiliary Radio Station License Databases Available for Review prior to ULS Implementation", *Public Notice*, May 7, 1999.

<sup>8</sup> See *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, ET Docket No. 01-75, *Order*, DA 03-1141, 68 FR 41284 (Jul. 11, 2003), 18 FCC Rcd 7032 (rel. Nov. 13, 2002), ¶ 4 (*StayOrder*).

<sup>9</sup> *Id.* ¶ 6.

<sup>10</sup> *Id.* ¶¶ 1, 8.

<sup>11</sup> See SBE Letter, Emergency Request for Waiver of Filing Fees for Certain Broadcast Auxiliary Modification Applications Submitted on Form 601, dated and filed Jun. 2, 2003; see also SBE request at 4.

request for relief and denied the request for waiver, stating that the Commission may only consider such requests filed by individual applicants pertaining to their own applications in accordance with Section 1.1117, and, moreover, SBE had not established good cause for a waiver of application fees.<sup>12</sup> OMD further stated that the FCC construes its waiver authority under Section 8 of the Communications Act narrowly and will grant fee waivers on a case-by-case basis upon a showing of “extraordinary and compelling circumstances.”<sup>13</sup> OMD found that the fact that the Commission adopted new coordination procedures requiring a more accurate database is not in and of itself sufficiently compelling justification for such a waiver, and that SBE’s assertion that it would be unfair to subject licensees and applicants to an incomplete and inaccurate database provides no grounds for such a waiver, noting that the *Stay Order* had already largely addressed this concern via the six-month extension it provided for completions and corrections to the database. Finally, OMD found that SBE had neither demonstrated that the purported interests of SBE’s members in not paying the fees would be in the public interest nor established that the public interest would be served by a grant of the request, and denied the request for waiver.<sup>14</sup>

6. In its Request, SBE generally reiterates the reasons set forth in its Initial Request and argues for an additional six month stay.<sup>15</sup> SBE provides updated figures in a footnote suggesting that approximately 50% of fixed stations in the 7 GHz and 13 GHz bands do not have receive site coordinates listed in the ULS.<sup>16</sup> SBE notes that many BAS licensees waited for a determination of the outcome of its fee waiver request before filing applications to provide the receive site information.<sup>17</sup> SBE states that it has publicized the September 3, 2003, denial of the waiver request and has taken more aggressive steps to urge BAS licensees to complete and correct the license record for their facilities, but that the initial six-month stay has proven insufficient. SBE requests the additional six months as a “final opportunity” for BAS licensees to supply the information. The Association for Maximum Service Television, Inc., (MSTV) and the National Association of Broadcasters (NAB) support SBE’s Request.<sup>18</sup> Robert Wyatt, Chief Engineer for a small group of television stations, also supports the SBE Request, stating that only a handful of the 45 BAS stations for which he is responsible have all the correct information listed in the ULS.<sup>19</sup> He states that he has been actively gathering information on these stations, but waited for the FCC’s September 3, 2003, determination regarding SBE’s fee waiver request and, due to the lateness of that denial, does not have sufficient time to file applications before the current October 16, 2003, effective date of the coordination rules.

7. The National Spectrum Managers Association (NSMA), in its Opposition to the Request for Extension of Temporary Stay (Opposition), opposes an additional stay, asserting that the institution of new coordination procedures will best satisfy SBE’s concerns about appropriate interference analysis,

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<sup>12</sup> See OMD Letter, Emergency Request for Waiver of Filing Fees for Certain Broadcast Auxiliary Modification Applications Submitted on Form 601, Fee Control No. 00000RROG-03-086, dated Sep. 3, 2003, at 3 (OMD Letter). 47 C.F.R. § 1.1117.

<sup>13</sup> 47 U.S.C. § 158(d)(2). See OMD Letter at 3. See also *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd 947, 958, ¶ 70 (1987); *Sirius Satellite Radio Inc.*, FCC 03-135, 2003 WL 21402609, ¶ 11 (rel. Jun.19,2003)

<sup>14</sup> See OMD Letter at 3.

<sup>15</sup> See SBE Request at 1-4. See also ¶ 3, *supra*.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> See Association for Maximum Service Television, Inc., (MSTV) and the National Association of Broadcasters (NAB) Comments, filed Oct. 14, 2003.

<sup>19</sup> See Robert Wyatt Comments, filed Oct. 8, 2003; see also Cohen, Dippell and Everist, P.C., Comments, filed Oct. 14, 2003.

whereas delay will not address or satisfy SBE's concerns about database completeness and accuracy.<sup>20</sup> NSMA explains that, under the new coordination procedures, coordinators have an abiding interest in making sure that path data for the existing and potentially affected paths is complete and accurate, whether in initiating or responding to a coordination notification, and can share any missing information or data corrections via the response provision of coordination.<sup>21</sup> Thus the opportunity for response is what most effectively generates interaction and data sharing and results in addressing SBE's concerns.<sup>22</sup> NSMA explains that information exchanged during the bilateral notification-response process in coordination stimulates the development and growth of coordinators' databases so that coordination can be conducted without reliance on a single, "guaranteed accurate" database. NSMA concedes that the inaccuracies in the information currently available can lead to inaccurate interference analysis before the notification is initiated, but emphasizes that the bilateral process provides a natural opportunity for correction by affected licensees via response. NSMA notes that, to address the possibility of there being a BAS path missing entirely from both the ULS and industry databases, coordinators could send coordination notifications to all broadcasters in the geographic area of interest, with the expectation that those having BAS facilities not accounted for in the analysis would respond accordingly.

8. SBE, in its Reply to Opposition to the Request for Extension of Temporary Stay (Reply), asserts that NSMA's experience with databases for the FS under Part 101, which are in "far better shape" than BAS in the ULS, is not relevant to the additional time needed to provide complete and correct information for Aural and TV BAS in the ULS.<sup>23</sup> SBE asserts that the coordinators should bear the burden of doing the analysis before notification, and not rely on licensee response to "set things right."<sup>24</sup> SBE objects to sending notifications to every broadcaster in a market to address BAS paths missing from ULS and industry databases, as suggested by NSMA, because the requisite review and analysis to determine the effect of proposed facilities on BAS facilities would place a massive and completely unfair burden on broadcasters. Finally, SBE states that it "might make some sense" to proceed with the new coordination rules if, after an additional six months, the database is still inaccurate. Viacom Inc., Entercom Communications Corp., and Sarkes Tarzian, Inc., (collectively, Joint Commenters) support SBE's Request and Reply, adding that sending notifications to every broadcaster in a market as described above would be highly inefficient and unworkable.<sup>25</sup>

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<sup>20</sup> See NSMA, Opposition to the Request for Extension of Temporary Stay, filed Oct. 9, 2003, at 2 (Opposition).

<sup>21</sup> Under the coordination rules, in engineering a system, an applicant must, by appropriate studies and analyses, select sites, transmitters, antennas, and frequencies that will avoid interference in excess of permissible levels to other users. All parties must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum. Coordination involves two separate elements: 1) notification by the applicant, to all licensees and other applicants whose facilities could affect or be affected by the proposed facilities, of the relevant technical details of the proposed facilities, and 2) response by affected parties within 30 days, with the provisions that: a) responses indicating potential interference must specify the technical details in writing, b) all parties must make every reasonable effort to eliminate all technical problems and conflicts, and c) if no response is received within the 30 day period, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application. Further, all technical problems that come to light during coordination must be resolved unless a statement is included with the application regarding the conflict. See 47 C.F.R. §§ 101.103(d), 74.502(d), 74.638(b), 78.36(d).

<sup>22</sup> See NSMA Opposition at 3-5.

<sup>23</sup> See SBE, Reply to Opposition to the Request for Extension of Temporary Stay, filed Oct. 8, 2003, at 2-3 (Reply).

<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> See Viacom Inc., Entercom Communications Corp., and Sarkes Tarzian, Inc., Joint Comments in Support of Request for Extension of Temporary Stay, filed Oct 10, 2003, at 4 (collectively, Joint Commenters, Joint Comments).

9. The Commission generally employs a four-part test under the standard set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission* in determining whether to grant motions for stay.<sup>26</sup> Under this standard, the petitioner must demonstrate (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors grant of the stay.<sup>27</sup> As discussed below, we find that a stay is not warranted.

10. First, we believe that, although the database issues again raised by SBE in this second request remain a concern, there is no indication that additional time would result in resolution of these issues. We observe that BAS licensees have had almost a full year, from the November 13, 2002, release of the *Report and Order* until now, in which to file applications to complete and correct the BAS license records in the ULS. However, there is no evidence in the record that more time alone will lead licensees to file. Licensees did not need to wait, as noted by SBE, for a determination of SBE's blanket fee waiver request before filing. They could have filed while the request was pending because, if it had been granted, their application fees would have been refunded. Alternatively, they could have filed their own request under the provisions of Section 1.1117.<sup>28</sup> Moreover, having elected to wait, they could have prepared for filing in anticipation of the determination and filed during the generous six week window remaining between the September 3, 2003, determination of SBE's fee waiver request and the last day of the stay, October 15, 2003. We note that Commission records indicate a modest increase in the filing of applications for Aural and TV BAS modifications during the stay, some of which could be attributed to filings for completion and correction of receive site information, but that most of the increase occurred in the last month of the stay. We conclude that there is no evidence in the record in this proceeding, or in the licensing record, indicating that additional time will likely result in filings substantial enough to warrant further delaying the efficiency and protection benefits offered by the new coordination procedures.

11. Second, we agree with NSMA that the continued existence of legacy incompleteness and inaccuracies in the ULS need not seriously affect the efficacy of coordination procedures or otherwise result in irreparable harm due to interference to existing facilities, as stated in the *Stay Order*.<sup>29</sup> NSMA asserts that coordination procedures can proceed successfully even with an incomplete or inaccurate database, as the procedures provide a practicable opportunity for all potentially affected parties to respond to the proposed coordination request, providing missing or corrective information where needed, before the facilities are placed under application. Consistent with the coordination requirement for full cooperation and reasonable effort among all parties in resolving potential conflicts, we clarify that existing licensees have a responsibility to respond whenever a notification contains any omissions or errors regarding their facilities that could lead to potential interference.<sup>30</sup> We further clarify, in response to the concerns of SBE and the Joint Commenters, that it will be the initiating party's responsibility to provide existing licensees with the complete information used to characterize the notified party's facilities for the engineering studies and analyses upon which the coordination is based, wherever that information is suspected of containing omissions or errors. Further, where data is missing or incorrect in the

<sup>26</sup> *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977); see also *Florida Public Service Commission, Request for Interpretation of the Applicability of the Limit on Change in Interstate Allocation, Section 36.154(f) of the Commission's Rules, Order Granting Motion for Partial Stay*, 12 FCC Red 14324 (Accounting and Audits Division 1996).

<sup>27</sup> *Id.*

<sup>28</sup> 47 C.F.R. § 1.1117; see also ¶ 15, *infra*.

<sup>29</sup> See *Stay Order* ¶¶ 4,6.

<sup>30</sup> See 47 C.F.R. §§ 101.103(d), 74.502(d), 74.638(b), 78.36(d); n. 21, *supra*.

notification, and the complete or corrective data is brought to the initiating party's attention via response, it will be the initiating party's responsibility to conduct any engineering studies and analyses required to re-assess the impact on the existing facilities, as newly documented, and re-initiate coordination, as needed.

12. Finally, in view of the above, we believe that further delay in the application of the coordination procedures for Aural and TV BAS would not be in the public interest, because it would unnecessarily delay the efficiency and protection benefits offered by these procedures. We believe that these new procedures, because they afford all potentially affected existing licensees sufficient opportunity to respond to each proposal, are sufficient to avert harmful interference to or from existing facilities, and will actually enable parties to identify complete and accurate information on existing facilities.

13. In order to encourage BAS licensees to file applications for modification where needed to complete receive site data where it is missing in the ULS, we will allow the filing of such applications without frequency coordination, provided the application supplies only missing receive site data. Receive site data may include parameters such as site geographic coordinates, site elevation above mean sea level, and antenna height, beamwidth, gain, manufacturer, and model number. Further, the application must include a showing demonstrating that the station was licensed at a time when receive site information was not required, or documenting that the information now missing was previously licensed or provided under application to the FCC.<sup>31</sup> The information provided must also be consistent with any data already in the database, such as transmit azimuth or receive site data.<sup>32</sup> We conclude that the filing of receive site information without coordination, where it is missing under circumstances as described above, would be appropriate and should be permitted.

14. We believe that when the coordination rules become effective, licensees will be motivated to provide this information because they will be acting in their own self-interest to avoid interference. We note that the new coordination process provides an opportunity for a potentially affected licensee to respond or otherwise provide corrective information regarding the consideration of its facilities, or the effect of the applicant's new facilities on its facilities. However, in the absence of such a response, the applicant will be deemed to have made reasonable efforts to coordinate and may file the application.<sup>33</sup> If the licensee's receive information in the database is incomplete or incorrect, and the applicant consequently does not properly consider the licensee's facilities, and the licensee fails to provide corrective information during coordination, there could result a grant of new facilities that could ultimately cause harmful interference to the existing licensee. If, on the other hand, the licensee's receive

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<sup>31</sup> We note that the FCC previously provided an opportunity for BAS licensees to correct database information before BAS licensing on the ULS was initiated. See "Wireless Telecommunications Bureau Makes Broadcast Auxiliary Radio Station License Databases Available for Review prior to ULS Implementation", *Public Notice*, May 7, 1999. Only facilities licensed on the basis of an application filed before August 30, 1999, the date on which processing of Aural and TV BAS applications was initiated on ULS, may now take advantage of this opportunity to provide ULS receive site data without undergoing frequency coordination. See "Wireless Telecommunications Bureau to Begin Use of Universal Licensing System (ULS) For Microwave Services on August 30, 1999", *Public Notice*, DA 99-1543, August 6, 1999.

<sup>32</sup> For example, any modification to transmit azimuth required as a result of providing receive site geographic coordinates will not be eligible for relief from coordination and, if the change exceeds one degree, will require evidence of frequency coordination. Calculation of transmit azimuth may be checked on-line at <http://wireless.fcc.gov/cgi-bin/utilities/accudist.pl>. See 47 C.F.R. §§ 1.929(d), 101.103(d), 74.502(d), 74.638(b), 78.36. See also *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Memorandum Opinion and Order on Reconsideration, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999) ¶¶ 15-16 (*ULS Reconsideration Order*).

<sup>33</sup> See 47 C.F.R. §§ 101.103(d)(2)(iv), 74.502(d), 74.638(b), 78.36(d)(2)(iv).

information in the database is complete and correct, the applicant can properly consider the licensee's facilities, and this situation can be averted.

15. Finally, we note that although SBE's request for a blanket fee waiver has been denied, a request by an individual applicant for waiver of the application fee for modification of an Aural or TV BAS license remains an option in certain circumstances. Such a request would have to be made by the applicant case-by-case with each application, showing good cause and promotion of the public interest, and otherwise complying with the criteria in Section 1.1117, and the request would have to demonstrate extraordinary and compelling circumstances specific to the licensee's situation.<sup>34</sup> We note, however, that a fee waiver request based on compliance with a new requirement, such as new coordination procedures, would not be sufficient in this regard.<sup>35</sup>

16. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), and Section 1.429 (k) of the Commission's rules, 47 C.F.R. § 1.429 (k), that the Society of Broadcast Engineers' Request for Extension of Temporary Stay **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Edmond J. Thomas  
Chief  
Office of Engineering and Technology

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<sup>34</sup> 47 C.F.R. § 1.1117. *See also* ¶ 5, *supra*. In accordance with the procedures set forth in Section 1.1117, the requisite application fee, currently \$120 for modification of an Aural or TV BAS license, must be submitted with the application and request for waiver, and will be refunded if a waiver is granted. *See also* 47 C.F.R. § 1.1113; Federal Communications Commission, Wireless Telecommunications Bureau Fee Filing Guide, Effective Sep. 11, 2003.

<sup>35</sup> *See* ¶ 5, *supra*.